

REMARKS

Claims 9, 10, 12 to 19, and 21 to 24 are now pending in the present application.

In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

A certified copy of the translation of German Patent Application No. 10231687.2 should have been included with the previous response. The Office indicated that the certified copy was not received, and thus a certified translation of the originally filed application accompanies this response.

Claims 9, 10, 12 to 19, and 21 to 24 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,009,368 ("Labuhn") in view of U.S. Patent No. 5,400,864 ("Winner").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the rejections may not be agreed with, to facilitate matters, claim 9 has been rewritten to better clarify the claimed subject matter.

In particular, claim 9, as presented, is to a method for notifying a driver of a motor vehicle equipped with an adaptive distance and speed controller, including the feature of one of activating or deactivating a takeover prompt which informs the driver that the vehicle is coming critically close to a target object to prompt the driver to perform a brake intervention. Support for this feature is provided, for example, on page 4, line 29 to page 5, line 5, and page 6, lines 15 to 18, of the Specification. Claim 14, as presented, includes features like those of claim 9.

It is respectfully submitted that the Labuhn and Winner references, whether taken alone or combined, do not disclose or suggest the feature of a takeover prompt which informs the driver that the vehicle is coming critically close to a target object to prompt the driver to perform a brake intervention, as provided for in the context of the presently claimed subject matter.

The Labuhn reference is not concerned with the actions of the vehicle operator, and it is therefore not concerned with the driver performing a *brake intervention*. The Labuhn reference is merely concerned with an adaptive cruise control system in which when the inter-vehicle spacing at initiation of the succeeding vehicle deceleration does not provide the predetermined minimum space, the decelerating of the succeeding vehicle occurs in accordance with a *predetermined maximum deceleration* – but not with a driver's *brake intervention*.

The Winner reference does not cure the deficiencies of the primary reference. In particular, the Winner reference does not disclose the feature of a takeover prompt which informs the driver that the vehicle is coming critically close to a target object to prompt the driver to perform a *brake intervention*. Rather, the Winner reference is concerned with a driver *accelerating* his vehicle when preparing to pass another vehicle, not with a driver *braking* to avoid an accident.

Accordingly, claims 9 and 14 are allowable, as are their respective dependent claims 10, 12, 13, 15 to 19, and 21 to 24. Withdrawal of the rejections is therefore respectfully requested.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be

supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

In sum, it is respectfully submitted that claims 9, 10, 12 to 19, and 21 to 24 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully Submitted

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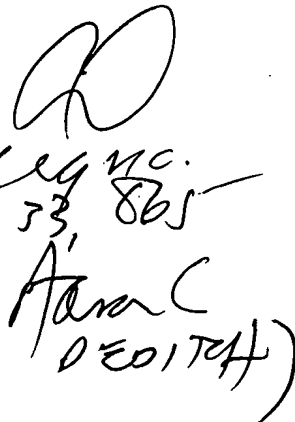
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